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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

TERRANCE WALKER,

Plaintiff,

vs.

INTELLI-HEART SERVICES, INC.,
DANNY WEISBURG, VANNESSA
PARSONS, DANIEL GERMAIN,

Defendants.

Case No. 3:18-CV-00132-MMD-CBC

**DEFENDANT DANIEL GERMAIN'S
OPPOSITION TO PLAINTIFF'S
MOTION TO COMPEL DEFENDANTS
TO MEET AND CONFER ON JOINT
DISCOVERY PLAN**

Defendant DANIEL GERMAIN, by and through his attorney of record, STEVEN T. JAFFE, ESQ., of HALL JAFFE & CLAYTON, LLP, respectfully submits the following memorandum of points and authorities in opposition to Plaintiff's Motion to Compel Defendants to Meet and Confer on Joint Discovery Plan, filed on May 22, 2019 (ECF No. 189).

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION & PROCEDURAL POSTURE

There is no need for the parties to confer on a Joint Discovery Plan because the Court has already determined that discovery is stayed pending the resolution of Defendants' motions to dismiss (ECF Nos. 159, 169). Should the Court agree that dismissal is warranted, the Court has no reason to compel discovery. As such, Plaintiff's motion to compel such a conference is unnecessary, premature, frivolous and should be denied.

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1 On April 24, 2019, the Magistrate Judge Carla Baldwin Carry, entered an order staying
2 discovery in this matter pending the appearance of the new joined defendants and stating, “[t]he
3 court will set a case management conference following the appearance of the newly named
4 defendants.” ECF No. 157.¹ On May 17, 2019, the District Court entered a minute order denying
5 Plaintiff’s Motion to Reopen Discovery (ECF No. 174) and reaffirmed, pursuant to its prior
6 order (ECF No. 166) that additional “discovery was unnecessary to support Plaintiffs response
7 to the pending motion to dismiss.” (ECF No. 188). Following that Order, defendants confirmed
8 that pursuant to the Court’s order, they would wait to confer on a Joint Discovery Plan until such
9 time as the Court issued its ruling on the pending on motions to dismiss. *Declaration of Terrance*
10 *Walker*, dated May 22, 2019, Exhibit 1. Plaintiff rejected this, arguing, “one order has nothing
11 to do with the other order.” *Id.*

12 II. DISCUSSION

13 In this case, Mr. Germain has filed a motion to dismiss in lieu of an answer and as such,
14 should not be required to participate in a Rule 26(f) conference. While LR 26-1(a) requires the
15 parties to conduct a Rule 26(f) conference “within 30 days after the first defendant answers or
16 otherwise appears”, such a rule may be modified by the Court as appropriate “based on the
17 circumstances of any particular case.” LR 1-3.

18 Pursuant to the Court’s order on April 24, 2019, the Court indicated it would be
19 responsible for setting a case management conference in this matter. In other words, the court
20 indefinitely postponed the scheduling requirements under LR 26-1. By its subsequent orders,
21 the Court confirmed such discovery would take place, if necessary, after the resolution of the
22 motions to dismiss, once again indefinitely postponing the requirements of LR 26-1. This is not
23 unusual. *See e.g., Ministerio Roca Solida v. U.S. Dep’t of Fish & Wildlife*, 288 F.R.D. 500, 507
24 (D. Nev. 2013); *Tradebay, LLC v. eBay, Inc.*, 278 F.R.D. 597, 608 (D. Nev. 2011); *Aguirre v.*
25 *S. Nevada Health Dist.*, No. 2:13-CV-01409-LDG, 2013 WL 6865710, at *2 (D. Nev. Dec. 30,
26 2013). Plaintiff’s motion should be denied.

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¹ That order was affirmed by the District Court on May 30, 2019 (ECF No. 190).

1 Defendant Daniel Germain reserves the right to seek his attorney fees incurred in
2 responding to this motion pursuant to Fed. R. Civ. P. 11(b)(1) and (c). *See Wood v. McEwen*,
3 644 F.2d 797 (9th Cir. 1981) (affirming sanctions and attorney fee award against *pro se* litigant
4 who continuously refused to abide by the Court's discovery orders and made voluminous
5 frivolous filings).

6 DATED this 5 day of June 2019.

7 **HALL JAFFE & CLAYTON, LLP**

8 By: 

9 STEVEN T. JAFFE, ESQ.

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11 7425 Peak Drive

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13 *Attorney for Defendant, Daniel Germain*

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of **HALL JAFFE & CLAYTON, LLP**, and on this 5th day of June 2019, I served a copy of the foregoing **DEFENDANT DANIEL GERMAIN'S OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL DEFENDANTS TO MEET AND CONFER ON JOINT DISCOVERY PLAN** as follows:

- ☒ **U.S. MAIL** — By depositing a true copy thereof in the U.S. Mail, first class postage prepaid and addressed as listed below; and/or
- ☐ **FACSIMILE** — By facsimile transmission to the facsimile number(s) shown below; and/or
- ☐ **HAND DELIVERY** — By hand-delivery to the addresses listed below; and/or
- ☒ **ELECTRONIC SERVICE** — Pursuant to the Court's CM/ECF e-filing system.

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